IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.38 OF 1994

Bakkas Ajij Sanadi
Age: 27 years, Occupation
Mistry, Resident of Kavathe
Mahankal, Dist. Sangli. ..Appellant
(Org. Accused)

Vs.

The State of Maharashtra ..Respondent

Mr.S.A. Ingawale for the appellant.
Mr.V.B. Konde-Deshmukh, APP for Respondent-State.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.

Date : September 06, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal has been filed challenging the Judgment and Order dated 23rd August, 1993 delivered by the IInd Additional Sessions Judge, Sangli convicting the appellant-accused for offence under Section 302 of IPC and sentencing him to life imprisonment and to pay a fine of Rs.100/- in default RI for one month in Sessions Case No.204 of 1992.

2. The prosecution case briefly stated is as under:-

00000The incident of assault had taken place at about 8.15 p.m. on 4/8/1992 in Kavathe Mahankal when deceased Ashok Appa Chavan was assaulted with a stick on his head. He was taken by one Pravin Patil and

Sunil Sutar to his house in injured condition. The wife of the injured Suman PW 7 took her injured husband first to rural hospital at Kavathe Mahankal where he was examined at 9.15 p.m. by PW 4 Dr. Ranjit Patil. After giving some treatment to him, the doctor advised that the injured should be taken to Civil Hospital, Sangli as the injured was unconscious and in precarious condition. The injured was, therefore, immediately shifted to Civil Hospital, Sangli where he was admitted at about 12.10 a.m. same night. The injured ultimately died on 12/8/1992 at about 10 a.m. The post-mortem examination was carried on the dead body by Dr. Gulabsingh Rajput PW 5. The complaint (Exh.8) in respect of the incident of assault was lodged by PW 1 Raghuvir Kanerikar on 6/8/1992 in which he has stated that he along with his friend Maruti Lohar PW 3 had seen the incident of assault by the accused. Both of them advised injured Ashok Chavan to take medical treatment and they left the place. After the F.I.R. (Exh.8) of PW 1 was recorded on 6/8/1992, crime was registered for offence under Section 326 of IPC and after the death of injured Ashok Chavan, the offence was converted under Section 302 of IPC. The accused was arrested on 6/8/1992 itself i.e. on the day when the complaint was lodged. After his arrest there was a recovery of

one stick at his instance on 8/8/1992 which was seized under seizure panchanama Exh.20. There is no mention of stick having any blood stains. After the completion of investigation, charge-sheet came to be filed and the case was committed to the Sessions Court at Sangli.

3. In the Sessions Court charge was framed against the accused for offence under Section 302 of IPC, to which he pleaded not guilty. On behalf of the prosecution 9 witnesses were examined. PW 1 is Raghuvir Kanerikar, who had lodged complaint (Exh.8) on 6/8/1992 and claimed to be an eye witness. PW 2 is Shankar Chougule, who acted as panch for the spot panchanama Exh.10. PW 3 is Maruti Lohar, another witness who claimed to be an eye witness. PW 4 is Dr. Ranjit Patil, who had examined and given some treatment to the injured in the Rural Hospital at Kavathe Mahankal. PW 5 is Dr. Gulabsingh Rajput, who had conducted post-mortem examination on the dead body. PW 6 is Shivaji Jadhav, who was panch for the recovery of stick at the instance of the accused. PW 7 is Suman Chavan, the wife of the deceased. PW 8 is Govarilal Dabade, the Police Head Constable who recorded the complaint and lastly, PW 9 is PSI Vithal

Shinde, attached to Kavathe-Mahankal Police Station who investigated the case and filed charge-sheet in the matter. The defence of the accused was of denial. According to him complainant PW 1 Raghuvir Kanerikar is friend of Maruti Lohar i.e. PW 3 with whom the accused had enmity owing to the slap given by the accused to his nephew previously and, therefore, false complaint came to be lodged against him.

4. After considering the entire evidence on record the learned trial judge convicted the appellant-accused for offence under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/- in default RI for one month. The said order of conviction and sentence is impugned in this appeal.

5. We have gone through the entire evidence on record and heard both sides. The prosecution is mainly relying on the evidence of two eye witnesses i.e. PW 1 Raghuvir Kanerikar and PW 3 Maruti Lohar, who claimed to be eye witnesses to the incident. Both of them seem to be chance witnesses in as much as they stated that about 8.15 p.m. they were passing from

the place of incident. They along with one Satish Jadhav were chit-chating with each other for about 15 minutes. House of Maruti was near that place. PW 1 complainant started going towards his house. When they were crossing the house of Jogi Sutar, injured Ashok Chavan gave call to Maruti i.e. PW 3. That time they saw accused giving stick blow on the head of the deceased and thereafter the accused went away towards his house. Ashok Chavan was injured and fell down. Both of them deposed that they advised injured to take medical treatment and they went to their respective houses. PW 1 in his cross-examination has admitted that after the incident he had not taken Ashok Chavan to the hospital for treatment nor he helped him to go to his house but he only advised him to go to the hospital. Similarly, another eye witness PW 3 Maruti Lohar also has deposed same way. None of them had even approached the police. The complainant PW 1 admitted in his cross-examination that he had not informed the police about the incident till the police made enquiry with him nor he made any enquiry about the health of Ashok Chavan or visited his house. He has also admitted that he had not given any reason why the accused had assaulted the deceased.

6. PW 3 Maruti Lohar in his cross-examination admitted that his nephew was assaulted by some boys in the lane. At that time accused intervened and gave slaps to his nephew. This is what accused has referred to in his 313 examination when he stated that complaint was falsely lodged against him by PW 1 at the instance of PW 3 who are friends inter se. What is significant is that though according to them they were eye witnesses to the incident and their attention was drawn towards the alleged assault made by the accused on the deceased when the deceased called PW 3 Maruti Lohar, obviously for help and the injured had fallen down, however, none of them bothered to take the injured at least to his house nor did they inform anybody until the police made enquiries with them. On what basis the police made enquiry with them is anybody's guess. The depositions of these two so called eye witnesses show that the deceased gave the call to PW 3 Maruti Lohar. That must have been done after the assault on him. It is doubtful whether they must have seen the assault on the deceased. Any way, when the injured had fallen down they would not leave him there only with the advice uniformly given by both of them to him that he should take medical treatment. Significantly they had not informed about the same even to his family members nor to the police nor told

any other person about the assault. It is admitted by them that they had not thereafter even gone to see or enquire about the health of the injured who had fallen down due to the assault on his head in their presence. Their deposition is identical and very cryptic which does not at all inspire confidence that they were eye witnesses to the incident. It is very easy to say that on the call given by the injured they turned to see him being assaulted by the accused and thereafter they gave him advice to take medical treatment and left the place. Their conduct in not taking the injured even to his house nor informing the family of the injured that he was lying injured though the injured had called PW 3 for help is so unnatural that the only way their conduct can be explained is to brand them as false and procured eye witnesses.

7. The prosecution has relied on the evidence of PW 7 Suman Chavan, the wife of the deceased. According to her, her injured husband was brought to the house on the date and time of the incident by Pravin Patil and Sunil Sutar. None of them have been examined by the prosecution. The wife of the deceased also does not state that they had told the name of the person who assaulted her husband. In natural course Pravin Patil

and Sunil Sutar would have enquired as to who had assaulted him unless the injured was unconscious and, therefore, must be unable to tell his wife also the name of the assailant. The prosecution ought to have examined them. The only reason for not examining them is that the deceased must be unconscious when they brought him home. PW 7 has admitted in her cross-examination that her husband was not able to walk and he was brought to her house by the above two persons. As per the wife's evidence, the injured was unable to walk and had to be brought to his house by above persons. She further deposed that both those persons i.e. Pravin Patil and Sunil Sutar had caught hold of her husband and brought him to her house. This shows that without the aid or assistance of these two persons the injured could not have gone to his house, yet the eye witnesses chose to leave him there and lodge complaint and give statement to the police, not of their own but on enquiry by the police after two days or on the third day of the incident. The wife of the injured has deposed that when she enquired with her husband as to who assaulted him, he told her that he was assaulted by the accused with a stick. If that is so, there is absolutely no reason why the complaint or statement of wife was not recorded any time before the complaint of PW 1 was recorded on the

third day. That only shows that the wife was also not knowing the name of the assailant because her husband must have been dropped to his house in unconscious condition though she has denied the suggestion in her cross-examination.

8. Significantly PW 4 Dr. Ranjit Patil, who had examined the injured in the hospital at Kavathe-Mahankal, has admitted in the cross-examination that injured was unconscious, while in his examination-in-chief, he stated that the patient was in precarious condition. He has further deposed that many persons had accompanied injured Ashok Chavan to the hospital. It is important to note that in that hospital though history was given of assault about one hour back, the name of the assailant was not disclosed though the wife of the deceased herself had accompanied the injured to that hospital as per her own deposition. Neither in that hospital nor in the hospital at the District place like Sangli where the injured was taken the same night, wife's complaint or statement was recorded, obviously because she was not aware as to who had assaulted the deceased. She has deposed that she had taken the injured to the Government Hospital at Kavathe Mahankal

and has admitted in the cross-examination that she was with her husband when he was admitted in Civil Hospital at Sangli. She has also admitted that immediately after giving treatment at Kavathe Mahankal her husband was taken to Sangli and further admitted that during that period her husband had become unconscious. In cross-examination, no doubt, she has stated that she informed the police about the incident but one would fail to understand why her complaint was not recorded then. Her evidence shows that she had accompanied her husband when he was taken to civil hospital, Sangli and police were there and according to her she had informed the police about the incident. One is at a loss to understand why her complaint was not recorded at Sangli Hospital by the police if she had informed the police about the incident, especially if she was knowing the name of the assailant about whom she learnt from her own husband, the injured, at home on enquiry.

9. This only means that her husband was taken to her house in unconscious condition and, therefore, she was not knowing as to who had assaulted her husband and that is why her complaint was not recorded by the police at Sangli Hospital. Otherwise one cannot

understand why the police had to wait to record a complaint of a third person on 3rd day if the wife of the injured had told the police on the same night in the hospital about the incident in question. This is because she was not knowing the name of the assailant. Her deposition is very guarded. She does not say that she told the police who the assailant was but only states that she told the police about the incident. This had created need to procure eye witnesses on the third day whose evidence is per se unreliable.

10. The prosecution has also tried to create a motive for the accused to assault the deceased. For that the words were put in the mouth of none other than the panch witness i.e. PW 2 Shankar Chougule, who was examined as a panch for the spot panchanama. Though examined to prove spot panchanama, he deposes that he was booking clerk in Mahakali Vedio Centre and four days prior to the incident accused had gone to the said Video Centre to see the movie and deceased who was working there as door-keeper had not allowed the accused to enter the Video Parlour without proper ticket. That time there was exchange of words between the two and accused had threatened the deceased. Significantly, there is omission in his police

statement about the said threat which he has admitted in his cross-examination. In his cross-examination he has further admitted that for the first time he had stated in his evidence that four days prior to the incident there was exchange of words between the accused and the deceased. The wife-PW 7 has admitted in her examination-in-chief that she did not know the reason why accused assaulted her husband. Similarly, complainant PW 1 has deposed that he had not given any reason why accused assaulted the deceased. Thus, the prosecution has also failed to prove the motive.

11. The prosecution has also led evidence about the recovery of stick at the instance of the accused. In that respect PW 6 Shivaji Jadhav has been examined as panch. That stick was seized under panchanama Exh.20 dated 8/8/1992. Apart from the fact that the said stick was recovered from behind the door in the house of the accused, the stick is not shown to have blood on it. In the absence of blood on the stick, recovery of the stick has no significance as a circumstance that can be used against the accused.

12. Thus, the evidence of eye witnesses is not

reliable for the reasons given in the foregoing paragraphs. It is clear that not only the evidence of eye witnesses does not inspire confidence but in all probability eye witnesses seem to have been procured by the prosecution as there was no evidence as to who had assaulted the deceased who must have been taken by two persons in unconscious condition to his house. The wife's evidence that the oral dying declaration was made by the deceased to her on enquiry is also unbelievable as in that case nothing could have prevented the police from recording her complaint when she was accompanying her husband to both the hospitals and according to her she had told the police about the incident. It would be relevant to point out that while in her examination-in-chief, Suman PW 7 deposed that she enquired with her husband as to who assaulted him and he informed her that accused had assaulted him with the stick, but in the cross-examination she has stated that her husband himself informed her that he was assaulted by the accused with the stick. The aforesaid discussion goes to show that the prosecution has tried to procure two eye witnesses and the wife of the deceased has also falsely deposed that her husband had told her that accused had assaulted him. The evidence about the motive also seems to have been procured by the prosecution through the mouth of panch

witness. In the state of such evidence one would wonder whether there was really any recovery of stick at the instance of the accused which, of course, has no relevance in the absence of finding of any blood thereon.

13. There is no challenge to the deceased having died homicidal death. But the prosecution has miserably failed to connect the accused with the crime in question. Therefore, there can be no hesitation in holding that prosecution has failed to prove the guilt of the accused.

14. In the result, the appeal is allowed and the order of conviction and sentence recorded against the appellant-accused by the IInd Additional Sessions Judge, Sangli on 23/8/1993 in Sessions Case No.204 of 1992 is quashed and set aside and the appellant-accused is acquitted of the offence with which he was charged. His bail bonds shall stand cancelled. The amount of fine, if paid, shall be refunded to the appellant-accused.

(S.S. Parkar, J.)

(S.R. Sathe,J.)